

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 15, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 570

Introduced by Senator DeSaulnier

February 22, 2013

An act to add Division 10.11 (commencing with Section 11999.40) to the Health and Safety Code, relating to alcohol and other drug counselors.

LEGISLATIVE COUNSEL'S DIGEST

SB 570, as amended, DeSaulnier. Alcohol and other drug counselors.

Existing law provides for the registration, certification, and licensure of various healing arts professionals. Existing law provides for various programs to eliminate alcohol and drug abuse, and states the finding of the Legislature that state government has an affirmative role in alleviating problems related to the inappropriate use of alcoholic beverages and other drug use.

This bill would require the State Department of Health Care Services, commencing January 1, 2015, to require each person who applies to an approved certifying organization to become registered or certified as an alcohol or other drug counselor (AOD counselor) or any AOD counselor who is registered or certified as of January 1, 2015, to obtain

a criminal background-clearance check, as specified. The bill would require the State Department of Health Care Services to submit to the Department of Justice fingerprint images and related information for the purpose of obtaining information as to the existence of past criminal conduct, as specified. The bill would require the Department of Justice to obtain specified information from the Federal Bureau of Investigation with respect to an applicant's or AOD counselor's past criminal conduct, and to provide this information to the State Department of Health Care Services. The bill would require the Department of Justice to charge a reasonable fee to an individual obtaining a criminal background check, sufficient to cover the cost of processing the criminal background check request, and would authorize request. *The bill would require the State Department of Health Care Services to establish a reasonable application fee, sufficient to cover the department's actual reasonable administrative costs in implementing the provisions of the bill, to be charged to the certifying organization for each applicant or AOD counselor requesting a background check. The bill would require the fees to be deposited into the Alcohol and Other Drug Counselor Professions Fund, which would be created by the bill. The bill would require the fund to be administered by the State Department of Health Care Services, and would make moneys in the fund available, upon appropriation, for purposes of administering the provisions of the bill.* The bill would require the State Department of Health Care Services, by September 1, 2014, to adopt regulations to implement the provisions-described-in of the bill, as specified. The bill would require the State Department of Health Care Services to establish the Director's Advisory Panel, and would require each prospective panel member to obtain a criminal background clearance, as specified *consisting of members who meet specified criteria.* The bill would authorize the panel to advise the department on the development of criteria for baseline decisions regarding AOD counselors, as these decisions relate to criminal background checks, and to make recommendations to the department regarding the criteria for disciplinary guidelines. The bill would require the department and approved certifying organizations to share specified information.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Division 10.11 (commencing with Section 11999.40) is added to the Health and Safety Code, to read:

DIVISION 10.11. ALCOHOL AND OTHER DRUG
COUNSELORS

11999.40. For purposes of this division, the following definitions apply:

(a) “AOD counselor” means a person registered or certified as an alcohol or other drug counselor by an approved certifying organization.

(b) “Approved certifying organization” means an organization that the department has approved to register or certify AOD counselors.

(c) “Department” means the State Department of Health Care Services.

(d) “Director” means the Director of Health Care Services.

(e) “Panel” means the Director’s Advisory Panel established pursuant to Section 11999.43.

11999.41. (a) Commencing January 1, 2015, the department shall require approved certifying organizations to require each person who applies to become registered or certified as an AOD counselor and any AOD counselor who is registered or certified as an AOD counselor as of January 1, 2015, to submit fingerprint images via Live Scan for purposes of obtaining a criminal background-clearance check under this section.

(b) For persons described in subdivision (a), ~~and for prospective members of the Director’s Advisory Panel established in Section 11999.43;~~ the department shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining both of the following:

(1) The existence and content of a record of state or federal convictions and state or federal arrests.

(2) Information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

1 (c) The Department of Justice shall forward to the Federal
2 Bureau of Investigation requests for federal summary criminal
3 history information received pursuant to this section. The
4 Department of Justice shall review the information returned from
5 the Federal Bureau of Investigation and compile and disseminate
6 a response to the department.

7 (d) The Department of Justice shall provide a state or federal
8 response to the department pursuant to subdivision (p) of Section
9 11105 of the Penal Code.

10 (e) The department shall request from the Department of Justice
11 subsequent notification service, as provided pursuant to Section
12 11105.2 of the Penal Code, for persons described in subdivision
13 ~~(a) and members of the Director's Advisory Panel.~~ (a).

14 (f) The Department of Justice shall charge the subject of the
15 criminal background check a reasonable fee sufficient to cover the
16 cost to the Department of Justice of processing the requests
17 described in this section.

18 (g) (1) For persons described in subdivision (a), the department
19 shall review all criminal background information received from
20 the Department of Justice and determine, based on the regulations
21 developed pursuant to subdivision (a) of Section 11999.42, whether
22 to deny an application or revoke a registration or certification based
23 on the criminal background information. The department shall
24 notify the individual's certifying organization of the department's
25 determination.

26 (2) The department may deny or revoke a registration or
27 certification pursuant to this subdivision only if the conviction of
28 a crime is substantially related to the qualifications, functions, or
29 duties of a registered or certified AOD counselor.

30 (3) *The department shall not deny or revoke a registration or*
31 *certification pursuant to this subdivision solely on the basis of*
32 *convictions stemming from prior use of drugs or alcohol, provided*
33 *the individual meets the terms of rehabilitation established in*
34 *regulations developed pursuant to subdivision (a) of Section*
35 *11999.42.*

36 (h) An applicant or AOD counselor whose application is denied
37 or whose registration or certification is revoked pursuant to
38 subdivision (g) shall have the right to appeal the denial or
39 revocation in accordance with Chapter 5 (commencing with Section
40 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

1 (i) The department ~~may~~ *shall* establish a reasonable application
2 fee to be charged to the certifying organization for each applicant
3 or AOD counselor requesting a background check pursuant to this
4 section, ~~not to exceed the reasonable costs to the department of~~
5 ~~implementing this division.~~ *section. The department shall set the*
6 *fee at an amount that is sufficient to cover, but shall not exceed,*
7 *the actual reasonable costs of administering this division.*

8 (j) *The Alcohol and Other Drug Counselor Professions Fund*
9 *is hereby created in the State Treasury, to be administered by the*
10 *department. The fund shall consist of the fees specified in*
11 *subdivision (i). Moneys in the fund shall be available, upon*
12 *appropriation, for the purposes specified in subdivision (i).*

13 11999.42. (a) By September 1, 2014, the department shall
14 adopt regulations to implement this division, which ~~may~~ *shall*
15 include, but are not limited to, *individualized assessment* standards,
16 exemptions, and terms of rehabilitation for eligibility to become
17 or to continue to be registered or certified as an AOD counselor,
18 including rebuttable presumptions with respect to the acceptance
19 or rejection of an applicant or an AOD counselor with a prior
20 criminal conviction.

21 (b) In adopting regulations pursuant to this section, the
22 department shall convene and consult a stakeholder's group and
23 consult the Director's Advisory Panel established under Section
24 11999.43.

25 (c) The regulations described in subdivision (a) may be adopted
26 as emergency regulations. The adoption of these regulations is
27 deemed to address an emergency and to be necessary for the
28 immediate preservation of the public peace, health, safety, or
29 general welfare. Emergency regulations authorized by this
30 subdivision shall be exempt from review by the Office of
31 Administrative Law. However, the department shall transmit those
32 regulations to the Office of Administrative Law for filing with the
33 Secretary of State and publication in the California Code of
34 Regulations. Notwithstanding any other law, for purposes of
35 subdivision (e) of Section 11346.1 of the Government Code, the
36 180-day period, as applicable to the effective period of an
37 emergency regulatory action and submission of specified materials
38 to the Office of Administrative Law, is hereby extended to one
39 year, by which time the department shall have adopted permanent
40 regulations.

1 11999.43. The department shall establish the Director's
2 Advisory Panel.

3 (a) The director shall select the members of the panel. *The panel*
4 *shall consist of subject matter experts* in accordance with the
5 following:

6 (1) ~~Each panel member shall be a certified AOD counselor and~~
7 ~~have~~ *No less than 75 percent of the panel shall be comprised of*
8 *certified AOD counselors with at least five years of experience in*
9 *alcohol and drug treatment services.*

10 (2) ~~(A) Each prospective panel member shall submit services,~~
11 ~~who have submitted~~ fingerprint images via Live Scan for criminal
12 background clearance checks under Section 11999.41. ~~If a~~
13 ~~prospective panel member has already submitted to a criminal~~
14 ~~background clearance in his or her capacity as a certified AOD~~
15 ~~counselor pursuant to subdivision (a) of Section 11999.41, that~~
16 ~~criminal background clearance meets the requirement prescribed~~
17 ~~by this subparagraph.~~

18 ~~(B) Prior 11999.41.~~ Prior to selecting each member of the panel,
19 the director shall review the prospective member's criminal
20 background information.

21 (2) *Each remaining member of the panel shall be an individual,*
22 *not certified as an AOD counselor, whom the director determines*
23 *to be a subject matter expert in the area of substance abuse.*

24 (b) The panel may do both of the following:

25 (1) Consistent with any applicable regulations established
26 pursuant to Section 11999.42, advise the department on the
27 development of criteria for baseline decisions regarding AOD
28 counselors, as these decisions relate to criminal background checks.
29 These criteria may include, but are not limited to, the circumstances
30 that would allow for registration or certification of an applicant or
31 AOD counselor, notwithstanding an applicant's or AOD
32 counselor's prior criminal conviction.

33 (2) Make recommendations to the department regarding criteria
34 for disciplinary guidelines.

35 11999.44. An approved certifying organization shall do all of
36 the following:

37 (a) Report complaints made against an AOD counselor to the
38 department, and assist in documenting these complaints.

1 (b) Comply with the department's decisions regarding
2 disciplinary actions, including initial denial of a registration or
3 certification.

4 (c) Report any known criminal convictions of an AOD counselor
5 to the department.

6 11999.45. The department shall report any complaints made
7 to the department against an AOD counselor to the approved
8 certifying organization that conferred the individual's registration
9 or certification and assist that organization in documenting the
10 complaint.

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